

# Exhibit E

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U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.

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- 3 1998  
CENTRAL DISTRICT OF CALIF.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BARBARA ALLBUT BROWN, et al.,  
Plaintiffs,  
vs.  
POLYGRAM RECORDS, et al.,  
Defendants.

CASE NO. CV 98-5381 DT (RZx)  
ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS PLAINTIFFS'  
FIRST AMENDED COMPLAINT

I. Background

A. Factual Summary

This case involves claims brought by Plaintiffs Barbara Allbut Brown ("Brown"), Peggy Santiglia Davison ("Davison"), and Phyllis Allbut Sirico, ("Sirico") (collectively "Plaintiffs") against Polygram Records ("Polygram"), Mercury Records, Inc. ("Mercury") and FGG Productions, Inc. ("FGG") (collectively "Defendants") for damages and injunctive and declaratory relief

1 in connection with the use of the name "The Angels," which is the  
2 professional name under which the Plaintiffs performed as a  
3 singing group. The causes of action contained in Plaintiffs'  
4 First Amended Complaint are as follows:

5 (1) The first cause of action is by Davison and Sirico for  
6 infringement of a registered trademark against all Defendants;

7 (2) The second cause of action is by all Plaintiffs for  
8 false designations and descriptions against all Defendants;

9 (3) The third cause of action is by all Plaintiffs for  
10 unfair competition against all Defendants;

11 (4) The fourth cause of action is by Brown and Sirico for  
12 breach of contract against FGG;

13 (5) The fifth cause of action is by Brown and Sirico for  
14 rescission against FGG;

15 (6) The sixth cause of action is by all Plaintiffs for  
16 constructive trust against FGG;

17 (7) The seventh cause of action is by all Plaintiffs for  
18 accounting against all Defendants;

19 (8) The eighth cause of action is by all Plaintiffs for  
20 fraud against FGG;

21 (9) The ninth cause of action is by Davison for conversion  
22 against all Defendants;

23 (10) The tenth cause of action is by Davison for trespass  
24 to chattel against all Defendants; and

25 (11) The eleventh cause of action is by all Plaintiffs for  
26 declaratory relief against all Defendants.

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1 Plaintiffs allege that on or about March 25, 1963,  
2 Brown and Sirico entered into a contract with Sabina Records  
3 ("Sabina Contract") under which all musical records and tapes  
4 recorded by Brown and Sirico would become the property of Sabina  
5 Records. In return, Sabina Records would pay Brown and Sirico  
6 specified royalties of all records sold by Sabina records or any  
7 affiliate or licensee. Amended Complaint at ¶ 15. The Sabina  
8 Contract also provided that it was to be interpreted under the  
9 laws of the State of New York. *Id.* at ¶ 14. On or about March  
10 25, 1963, after execution of the Sabina Contract, Sabina Records  
11 assigned its rights in the Sabina Contract to FGG. *Id.* at ¶ 18.

12 Plaintiffs state that Davison was never a party to the  
13 Sabina Contract, but sometime in 1963, Davison joined the group  
14 "The Angels" and took part in recording songs, including "My  
15 Boyfriend's Back." *Id.* at ¶ 19. "My Boyfriend's Back" became  
16 Mercury's largest album hit. Plaintiffs' Opposition at 1.

17 Plaintiffs allege that on or about June 13, 1963, Brown  
18 and Sirico signed a contract with FGG ("FGG Contract") under  
19 which FGG would pay Brown and Sirico specified royalties based on  
20 sales of Brown and Sirico's recordings.<sup>1</sup> *Id.* at ¶ 20. The FGG  
21

22  
23 Plaintiffs did not attach the Sabina Contract or the FGG  
24 Contract to their First Amended Complaint. However, Defendants  
25 submitted a copy of the Sabina Contract with their motion to  
26 dismiss. They represent that they requested a copy of the Sabina  
27 Contract from Plaintiffs and that Plaintiffs gave them a copy of  
28 the Sabina Contract but that page 10 is missing and Plaintiffs  
have been unable to locate page 10. Defendants also represent  
that neither party has been able to locate a copy of the FGG  
Contract.

1 Contract also provided that it was to be interpreted under the  
2 laws of the State of New York. *Id.* Subsequently, in June 1963,  
3 FGG granted Mercury and/or Phonogram "the exclusive and  
4 perpetual rights" to the master recordings of, and the use of,  
5 the compositions and performances recorded by Brown and Sirico,  
6 including but not limited to, "My Boyfriend's Back." *Id.* at ¶  
7 21. At some unspecified time, PolyGram became the successor-in-  
8 interest to Mercury and Phonogram and assumed all the rights and  
9 obligations under the agreements with FGG. *Id.* at ¶ 22.

10 Plaintiffs allege that they did not receive any royalty  
11 payments since receiving an initial payment in the early 1960's.  
12 *Id.* at ¶ 23.

13 On January 17, 1995, the United States Trademark and  
14 Patent Office issued a service mark registration of the name "The  
15 Angels," to Plaintiffs Sirico and Davison. Exhibit "A" attached  
16 to Amended Complaint.

17 **B. Procedural Summary**

18 On July 6, 1998, Plaintiffs filed the Complaint for  
19 Damages and for Injunctive and Declaratory Relief.

20 On August 6, 1998, Plaintiffs filed a Notice of  
21 Voluntary Dismissal Without Prejudice as to Defendant Mason &  
22 Company, which this Court granted on August 10, 1998.

23 On August 26, 1998, Plaintiffs filed the First Amended  
24 Complaint ("Complaint").

25 On September 17, 1998, Defendants filed a Notice of  
26 Motion and Motion to Dismiss Plaintiffs' First Amended Complaint,  
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